

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the Orchard Park April 16, 2024, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor Rodo, Chairwoman  
Robert Metz  
Robert Lennartz  
Dwight Mateer  
Michael Williams, Alternate

EXCUSED: Kim Bowers

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney  
John Wittmann, Code Enforcement Officer  
Anna Worang-Zizzi, Recording Secretary

The Chair called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or a business relationship with any member of the Board, it is incumbent upon him to make it known under State Law and the Town Code of Ethics.

The Chair stated that all persons making an appeal before this Board would be heard in accordance with the Town Laws of the State of New York, Article 16, Sections 267, 279 and 280a, Subdivision 3, and the Town of Orchard Park Zoning Ordinance. Per Section 144-63 (E) (1) All public notices have been filed. Any person aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal, specifying the grounds of the illegality. Such petition must be presented to the court within 30-days after filing of the decision in the office of the Town Clerk.

The Chair stated that in the absence of Ms. Bowers, Mr. Williams would be a voting member tonight.

#### **APPROVAL OF MINUTES:**

The Minutes for March 2024 were approved unanimously.

The Chair stated that Site Inspections of all cases presented tonight were made by:

**METZ, AYE / LENNARTZ, AYE / MATEER, AYE / RODO, AYE / WILLAMS, AYE**

#### **NEW BUSINESS**

1. ZBA File #08-24, Tod Bemiller & Alexis Sleight, 14 Kings Court, Zoned R-2, SBL# 172.06-1-9, (Sub Lot 22, Map Cover 2080. Requests an Area Variance to install an in-ground pool 4 feet from the covered patio. *No swimming pool shall be located closer than 10 feet to any building nor closer than 10 feet to any rear lot line. No swimming pool shall occupy more than 10% of the total area of the premises, §144-30C(6)(c).*

APPEARANCE: Alexis Sleight & Tod Bemiller – Owners  
Brenden (last name illegible) - Omega Pools

The Applicants explained that their property could be roughly divided into three zones; the area surrounding the creek, a treed area, and a flat area. Due to these limitations and the placement of utilities, they felt the pool needs to be placed nearer the covered patio than allowed under code.

The representative from Omega Pools explained that due to overhead power lines, which are not movable, they cannot place the pool as far from the covered Patio as they would like.

Ms. Sleight stated that they had already decreased the size of the pool to accommodate these limitations.

Mr. Williams confirmed that the covered patio was 4ft from the water line.

Mr. Lennartz inquired if there was access to the covered patio through windows. The Applicants stated there was not. It was established that the pool would not be visible to neighbors due to a privacy fence and a living fence.

Mr. Metz inquired how much the Applicant had reduced the size of the pool by. The Applicant stated they had reduced the pool from 18ft by 36ft, to 16ft by 32ft. They may be willing to reduce it farther to 14ft by 28ft.

Mr. Mateer inquired about the various power lines on the property. The Applicants stated there were two sets, one of which is not movable. Mr. Mateer inquired about changing the covered patio. The Applicants feel that would be an elaborate amount of work.

The Applicants explained that due to power lines on one side and the water table on the other side, they cannot move the pool without removing a large number of trees.

The Chair inquired if the Applicant had considered an above ground pool. The Applicants were opposed to this suggestion.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated no communications had been received.

#### BOARD DISCUSSION:

Mr. Williams was uncomfortable with the proposal.

The other Board Members were in agreement.

Mr. Williams made a **MOTION**, seconded by Mr. Mateer, to **DENY** the Area Variance based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought can be achieved in another way, other than the granting of the Variance.

- 4. The request is substantial.
- 5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
- 6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
WILLIAMS	AYE
MATEER	AYE
RODO	AYE

The Motion being **UNANIMOUS**, the Motion to **DENY** the Variance is **PASSED**.

- 2. ZBA File #09-24, John Simson, 29 Tanglewood Drive West, Zoned R-1, SBL# 173.20-4-8 (Sub Lot 38, Map Cover 2249). Requests an Area Variance to construct an 8 foot by 10 foot shed, 10 feet from the side lot line. *Minimum side setback in R-1 Zone is 15 feet, §144-9B.*

APPEARANCE: *John Simson & Cathy Topper – Owners*

The Applicants explained they need a shed to store pool furniture and garden equipment. They would like to locate it next to the pool. They had spoken to the neighbor directly impacted who is not opposed to the shed and submitted a letter from said neighbor to that effect. They noted that they have a privacy fence.

Mr. Mateer inquired if the Applicant had spoken to other neighbors. The Applicant stated that neither the neighbor on the other side, nor the neighbor to the rear had any objections.

Mr. Metz was not opposed to the Variance.

Mr. Lennartz established that the shed would be strictly for storage.

Mr. Williams inquired if the finishing materials of the shed would match the house. The Applicant answered affirmatively.

The Chair inquired if anything would be stored outside the shed. The Applicant responded negatively.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated no communications had been received.

BOARD DISCUSSION:

Mr. Mateer stated he feels the request is not substantial and the proposed shed will not be obtrusive and is a reasonable size.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **APPROVE** the Area Variance based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought cannot be achieved in another way, other than the granting of the Variance.
4. The request is not substantial.
5. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
RODO	AYE
MATEER	AYE
WILLIAMS	AYE

The Motion being **UNANIMOUS**, the Motion to **GRANT** the Variance is **PASSED**.

3. ZBA File #10-24 On Hold
4. \*\*\*ZBA File #11-24, Jeremy Kamholz, 94 Knoche Way, Zoned R-2, SBL# 153.20-2-75, (Sub Lot 75, Map Cover 3594). Requests an Area Variance to install stairs to an upper deck 11 feet from the side lot line. *Minimum side setback in R-2 Zone is 15 feet, §144-9B.*

APPEARANCE: *Jeremy Kamholz – Builder*  
*Paul Saffrin – Owner*

The Applicant explained that they would like to place the deck at this location for aesthetic reasons, to create usable space underneath, and to avoid blocking a window. He noted it was similar to other decks on the street, however their house is place slightly differently (not offset) on the lot, necessitating the Variance.

Mr. Lennartz inquired about a boarded up opening currently on the house. The Applicant explained that this is the sliding glass door which will open onto the future deck, and is currently boarded up for safety reasons.

Mr. Williams established that the deck would resemble the neighbor's deck.

Mr. Mateer inquired about reducing the size of the deck. The Applicant explained that there is an induction box which is already in place for a planned hot tub.

The Chair inquired if the Applicant had spoken to any neighbors. The Applicant stated the neighbors were not opposed.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the Variance.

(Twice) NO RESPONSE

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated no communications had been received.

#### BOARD DISCUSSION:

Mr. Lennartz feels that it is a minimal request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Williams, to **APPROVE** the Area Variance based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought cannot be achieved in another way, other than the granting of the Variance.
4. The request is not substantial.
5. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variance.

#### THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
RODO	NO
MATEER	AYE
WILLIAMS	AYE

The Motion being **FOUR (4)** in favor and **ONE (1)** opposed, the Motion to **GRANT** the Variance is **PASSED**.

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 7:33 P.M.

DATED: 5/10/2024  
REVIEWED: 5/21/2024

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman  
Zoning Board of Appeals